B.R.T.A. Dwr

1944. File No 44

Examined

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Legal Deptt
A Branch.

Subject:— Appeals to the
Bombay Revenue Tribunal
from Dharwar District.

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File No. B.R.T.A. Dwr./44.

270 A.

Chronological Statement of Facts.

This is an appeal filed by Mr. H.B.Kamalapurkar of Dharwar against an order of the Collector of Dharwar No.L.N.D. App. 134 dated 2nd March 1943. The appellant contends that the strip of land shown as C C'E B in the sketch is part of C.T.S.No.211 of which he is the purchaser.

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2. The C.T.S.No.211 was formed out of S.No.74. It belonged originally to Mr. Ramrao Bellari who sold it in 1908 to Chandrasani mother Tarasani. The latter conveyed it to Mr. M.N.Tembe by a sale deed dated 14th February 1921. The sale deed described the area sold as about 20 gunthas. A sanad was issued on 10th May 1923. It described the area as 20 gunthas 18 sq.yards. It was accompanied by a sketch, the area according to which would be 17 gunthas 10 sq.yards.

p. 3 file I.

p. 7 file III.

3. Mr. M.N.Tembe died in 1931. On 6th January 1938 his heirs applied to the C.T.S. officer for demarcating their plot in accordance with their sale deed and sanad as they intended to apply for building permission. On behalf of the applicants the boundary was shown by Mr. V.N.Tembe on 6th December 1939.

p. 17 file I.

p.45 file I.

4. The District Surveyor reported on 22nd December 1939 that the area as claimed by Mr.V.N.Tembe was 19gs. 70 sq.yds. and that the area of C.T.S.No.211 as per the C.T.S. map was 17 gunthas 10 sq.yards. He proposed to include some land to the south and some to the west in C.T.S. No.211 in order to make up its area as per the sale deed.

5. The D.I.L.R. pointed out on 18th March 1940

that the land to the south was claimed by the owner of the adjoining C.T.S.No.94/1 by adverse possession and that the land to the west (which is the subject matter of this appeal) was part of the P.W.D. road as per C.T.S. records. The area of the latter is 1 guntha 25 sq.yds.

6. The Executive Engineer stated on 23rd April 1940 that the disputed land had been in the possession of the P.W.D. for a long time, that it was part of the road side berm and was being used for stacking metal, and that there was a road-side gutter running in it. He further pointed out on 10th June 1940 that the boundaries of the roads had been confirmed by the Enquiry Officer in 1921. p.65 file I. pp.75-77 file I.

7. Meanwhile the appellant had purchased the C.T.S.no 211 on 25th January 1940 from the heirs of M.N.Tembe and had continued their application.

8. The Prant Officer held on enquiry under section 37(2) of the Land Revenue Code and decided on 11th June 1941 that the disputed land was part of the P.W.D. road. The appellant's appeal to the Collector was dismissed. p.53 file III.

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Memorandum of Instructions.

The strip of land which is the subject matter of this appeal is claimed by the appellant to be part of his C.T.S. No. 211. The City Survey map of 1921 shows the strip as lying outside the C.T.S. number and is therefore against the appellant. He contends however that the map is wrong. The basis of his contention is that he ought to have 20 g. 18 sq. yards for his plot as per his Sanad of 1923, whereas if the map were correct, he would get 17 g. 10 sq. yds. only.

2. The sketch drawn on the back of the Sanad was in accordance with the survey map. This sketch however cannot reasonably be considered to have been a notice to the holder of the sanad that his title was limited to an area of 17 g. 10 sq. yards only and excluded the disputed strip. There is nothing about the sketch which could have roused a suspicion that the area it enclosed was less than the area mentioned in the body of the sanad. It is therefore not necessary to take the technical plea that the sketch is conclusive and binding on the appellant.

3. The substantial question whether the sketch is wrong or whether the statement in the sanad is wrong may be dealt with on merits. In accordance with the maxim Falsa demonstratio non nocet "where the description is made up of more than one part, and one part is true, but the other false, there, if the part which is true describes the subject with sufficient legal certainty, the untrue part will be rejected." (Broom's Legal Maxims, page 426, Tenth edition). It is therefore permissible in this case to look at ~~on~~ other evidence and circumstances and decide which of the two descriptions, the statement about area ~~and~~ or the sketch, gave the appellant's title correctly in the sanad. (See also section 97 of the Evidence Act.)

4. It appears that the City Survey Enquiry and the Property Register relied as to the description of area upon the sale deeds only. An area of 20 g. 18 sq. yards cannot be made

up on any basis. Mr. V.N. Tembe showed land measuring 19 gunthas 70 sq. yards only. If the disputed strip is included in the C.T.S. No.211, the appellant still gets no more than 18 g. 35 sq. yards. The appellant has therefore to allege an encroachment to the extent of 1 g. 35 sq. yards on the part of the owner of the adjoining S.N. 94/1. Now whatever the position as between the appellant and the P.W.D., it cannot be supposed that the C.T.S. map was wrong in showing the boundary between C.T.S. No.211 and S.N. 94/1 also. The so-called encroachment therefore on the part of the owner of S.N. 94/1 must have been prior to 1920. It follows that the description 20 g. 18 sq yards as area of C.T.S. No.211 had no relation to the facts in 1920-21 and that the sale deed of 14.2.1921 also is wrong.

5. The Collector in his order has pointed out how if the appellant's contention is accepted, a police-chowki and some road-side trees would also have to be included in private properties.

6. It is rather in favour of the Government that the sketch on the back of the sanad is copied from the larger C.T. Survey map. Had the sketch been made independently for the purposes of the sanad only, it would have been easier for the appellant to attack it.

7. On these grounds it may be urged that it is the sketch which describes the title of the appellant correctly and that the description of 20 gunthas 18 sq. yards as area is the "untrue part" in the sanad.

8. Assuming that the disputed strip is part of C.T.S. No. 211, the appellant's title to it must be considered to have been extinguished on account of adverse possession on the part of the P.W.D. The P.W.D. Overseer who was examined by the Prant Officer (page 33, file III) had no personal knowledge of any metal stacked

on the strip at any time, but nevertheless the existence of the gutter for a long time is enough to have deprived the appellant's predecessors-in-title of the use of the strip. Mr. V.N. Tembe in his evidence stated thus: "If it had come to my knowledge that there was a gutter, I would have objected". That shows that the use of the strip for a gutter may be regarded as adequate for the purposes of adverse possession. There is therefore no question of whether the gutter was built of masonry or was 'Kachcha'. The appellant's witnesses do not state as to when the gutter was constructed, and that shows that it must have been there for a very long time. The appellant or his witnesses have nowhere stated what use they made of the disputed strip. A vague allegation of possession without specifying the acts of possession would not be sufficient for the appellant's case.

9. The attention of the Assistant Government Pleader is drawn to the present Collector's report at p. 11 of the papers, especially to the reply to ground No. 4 of the appeal memo.

No.2102

Urgent

Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 20th March 1944.

To

The Government Pleader,
High Court, Bombay.

Subject: Boundaries of S. Nos.211 and 74 of
Saptapur, District Dharwar.
Appeal before B.R.T. by Mr. H.B. Kamlapurkar.

Sir,

With reference to the subject noted above, I have the honour to state that the appeal has been fixed for hearing at 11 A.M. on Tuesday the 4th April 1944 in the Committee Room of the Secretariat, Bombay. I have the honour to request you, therefore, to instruct the Assistant Government Pleader, High Court, to appear and argue the appeal on the lines of the accompanying memorandum of instructions. Papers of the case in four files together with a map are forwarded herewith. The Assistant Government Pleader should be requested to have copies made of such documents as appear to him to be useful and to return the papers to Revenue Department on or before 27th March 1944 for further action.

Submitted for signature.

o/e

~~Sd/-~~

for Remembrancer of Legal Affairs.

P.A.

P.W.O.

No. 2163

Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 20th March 1944.

Copy with a copy of the memo. of instructions forwarded to Revenue Department for information.

for Remembrancer of Legal Affairs.

V.B.B.